

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 UNITED STATES OF AMERICA, )

4 Plaintiff, )

5 v. )

No. 6:05-60008-2-HO

6 PIROUZ SEDAGHATY, et al., )

7 Defendants. )

8  
9 TRANSCRIPT OF TELEPHONE CONFERENCE

10 BEFORE THE HONORABLE MICHAEL R. HOGAN

11 UNITED STATES DISTRICT COURT JUDGE

12 MONDAY, MAY 17, 2010

13 EUGENE, OREGON

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18 ALSO PRESENT: Scooter Slade  
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1 (Monday, May 17, 2010; 1:36 p.m.)

2 (The following proceedings were had in chambers.)

3 P R O C E E D I N G S

4 THE CLERK: Counsel, this is Jill Wright  
5 calling from Judge Hogan's chambers. Mr. Cardani, can  
6 you hear me?

7 MR. CARDANI: Yes.

8 THE CLERK: Thank you. Mr. Gorder?

9 MR. GORDER: Yes.

10 THE CLERK: Mr. Wax?

11 MR. WAX: Yes. And here with Mr. Sedaghaty.

12 THE CLERK: Thank you. And Mr. Matasar?

13 MR. MATASAR: Yes.

14 THE CLERK: And Mr. Slade?

15 MR. SLADE: Yes.

16 THE CLERK: Thank you. Counsel, please  
17 remember to identify yourself when you speak for the  
18 court reporter.

19 Now is the time set for Criminal Case 05-60008,  
20 *United States of America versus Pirouz Sedaghaty*, time  
21 set for in chambers telephone conference.

22 THE COURT: Hello. This is Mike Hogan.

23 Mr. Matasar, would you describe to me the scope  
24 of the accounting issues involved here?

25 MR. MATASAR: The scope of the accounting

1 issues?

2 THE COURT: Yes.

3 MR. MATASAR: Yes.

4 THE COURT: Frankly, I ask that because I  
5 wonder how much of that really is involved in this case.

6 MR. MATASAR: Okay. Well, the government has  
7 alleged that the first -- basically two substantive  
8 counts here, the first one concerns a false tax return.  
9 The tax return is alleged to be false in three places:  
10 Line 1, line 22, and line 57a.

11 And in our view -- I mean, the case as  
12 Mr. Cardani has always said to me is an accounting case,  
13 not a terrorism case. The government has to prove, in  
14 my view, that line 1 is false. And they have to prove  
15 that it was intentionally -- or willfully false. And  
16 they have to prove that it was materially false.  
17 Similarly with line 22, they have to prove all of those  
18 three things, and also with line 57a, so I --

19 THE COURT: I understand that, but isn't the  
20 question an intent question rather than an accounting  
21 question?

22 MR. MATASAR: Well, we believe -- and we have  
23 submitted an expert report to the government -- that  
24 line 1 is not false, and that -- or line 1 is not  
25 understated, and line 22 is not understated. We

1 acknowledge that line 57a is incorrect on the return.  
2 So there are two of the three issues, I think, there  
3 will be a bona fide question about whether or not the  
4 tax return was incorrect.

5 We have lined up an expert who was the head of  
6 the -- I'm sorry, I'm not thinking so clearly as I  
7 normally would be, but he was head of the nonprofit part  
8 of the Internal Revenue Service for eight years. And  
9 he's an important expert for us.

10 We're also going to have an expert -- we've  
11 been consulting with, I don't know if this expert will  
12 testify, about the other issues in the case.

13 MR. WAX: Judge, this is Steve Wax. With  
14 respect to line 57, while we will not be contesting that  
15 it included a mistake, we are contesting and there will  
16 be some very extensive and complex testimony about who  
17 made the mistake and how that can be established.

18 THE COURT: But is that --

19 MR. MATASAR: Let me also say, in the meetings  
20 preparing for this case, in the discussions that we've  
21 had at the Federal Defender's Office, in the discussions  
22 among the team, it -- I would say it's fair to say that  
23 the accounting issues have taken up more than half of  
24 our time in getting ready for the case. Steve, would  
25 you agree with that?

1 MR. WAX: Yes.

2 MR. MATASAR: So it is not -- I'm not just  
3 saying this because it's my part, but in our preparation  
4 for the case, it has not been a minor issue. Even  
5 though from the way the court sees it, the issues that  
6 come up, because these are sort of simple issues, we  
7 didn't really feel a need to bring out many of these  
8 issues before the court in the pretrial preparation, it  
9 doesn't mean that they're not an important part of the  
10 trial, though.

11 THE COURT: All right. Do you have something  
12 more then on your request for continuance?

13 MR. MATASAR: I'll just give an update of my  
14 wife's condition, which is that while sometimes we were  
15 optimistic that it would be better soon, the last day or  
16 two has been pretty negative. She's having sleeping  
17 problems. She's been -- last night, had very little  
18 sleep, lots of pain, a lot of sort of emotional  
19 problems. So the prognosis, again, for the long run,  
20 I'm telling you all, and I keeping telling myself, is  
21 good. The short-term hiccups are at times quite  
22 demanding of my time and my mental energy.

23 THE COURT: How long are you asking that the  
24 trial be set over?

25 MR. MATASAR: Steve and I talked about that,

1 and tell me if I'm wrong, Mr. Wax, but my -- our thought  
2 was that if it were set over until, say, September 1,  
3 either I would be able to do it or that would give him  
4 time to find somebody else to assist him to present the  
5 case. That way we could be assured of a date rather  
6 than have it be based on my ability to do it. That was  
7 the suggestion.

8 Steve, you can continue. Steve is much more  
9 organizationally in touch with everything right now than  
10 I am. But that was just an idea that we thought we  
11 would suggest.

12 THE COURT: All right. For the government.

13 MR. CARDANI: Judge, this is Chris Cardani. I  
14 would like to do what I was going to try to do in court  
15 last week and that is ask that the court maintain the  
16 trial date. I have a list of several reasons. May I  
17 present them?

18 THE COURT: Yes.

19 MR. CARDANI: First of all, the indictment was  
20 lodged in February of 2005. And, obviously, we're here  
21 over five years later. Mr. Sedaghaty knew of the  
22 indictment while he was out of the country and stayed  
23 out of the country for another two plus years.  
24 Discovery has been provided, the majority of it, in 2007  
25 and early 2008, including all of the accounting and tax

1 stuff, a lot of which was in the hard drives.

2 Mr. Sedaghaty has had the benefit of not just  
3 one but two and sometimes more lawyers with substantial  
4 experience. We were in last court last week for the  
5 *Daubert* hearing. And as I counted them, there were four  
6 lawyers in the courtroom representing Mr. Sedaghaty, and  
7 none included Mr. Matasar.

8 The pleadings in this are extensive. And  
9 although the accounting is described as complicated, we  
10 don't view it as that. We seem to have an agreement  
11 that the return was false. And as the court has  
12 correctly pointed out, the question is why that is, was  
13 it a mistake or was it a willful error. And by my  
14 observation, Mr. Wax has spent considerable efforts of  
15 his own in his, quote, part of the case being the lawyer  
16 to defeat the willfulness aspect. Mr. Matasar, I'm  
17 sure, is helping in that, but it does seem like  
18 Mr. Matasar has been the mainstay on the willfulness  
19 challenge.

20 During our -- the continuances, there have been  
21 five, this would be the sixth, we've been continued for  
22 a period of about two-and-a-half years, two of our  
23 witnesses have died. And they are substantive witnesses  
24 with something that we would like to have them presented  
25 to the jury, and because of these delays we have been



1 deprived of them. The court knows that this trial  
2 setting, the one on for June 7th, took an extraordinary  
3 amount of effort, including for the court, to set aside  
4 two weeks of its time, but also for everybody else  
5 including Mr. Matasar, Mr. Wax. Summer plans have been  
6 made around this trial date. Hotel rooms and flights  
7 have already been made for witnesses coming from faraway  
8 places.

9 And if there is a continuance, I wonder if it's  
10 as easy as just picking a date in the future that we can  
11 all agree on.

12 I respect Mr. Matasar's situation, and I don't  
13 want anything to be -- sound insensitive here, but if  
14 Mr. Matasar is able to work at least part-time, we do  
15 wonder why it is that Mr. Wax and the number of lawyers  
16 that he's had assisting in this case who already have  
17 more than a passing knowledge of the case can't be  
18 expected to come up to speed very quickly and maintain  
19 the trial date.

20 So in sum, Judge, we don't view this as a  
21 typical tax case where we're getting into how much tax  
22 is due and owing and things like that. From a  
23 straightforward accounting standpoint, there are only  
24 two witnesses from the government that we are going to  
25 call for the tax part of this case: The accountant who

1 represented Mr. Seda, and he's been interviewed  
2 extensively by not only Mr. Matasar, by Mr. Wax; and  
3 then an IRS representative to say that this return, if  
4 it were false in the ways we allege, it would be a  
5 material falsity. So two case-in-chief witnesses will  
6 be the tax case.

7 And I just don't see why we shouldn't be able  
8 to expect another lawyer to come up to speed and be able  
9 to maintain the trial date. That's all.

10 THE COURT: All right. Any response?

11 MR. MATASAR: I can say that -- I think I  
12 better not say anything. I'm pretty -- no, I'm not  
13 going to say anything. I'm profoundly offended, but I  
14 don't want to say anything on the record, I just don't.  
15 I think I just better shut up as well.

16 MR. WAX: Judge, we have the same logistical  
17 issues as the government with witnesses coming from  
18 overseas, with the track meet in Eugene, booking of  
19 hotel rooms, service of subpoenas, travel arrangements,  
20 et cetera. And we have been moving toward the June 7th  
21 trial date with the expectation that that's when the  
22 case would go.

23 What happened with Mr. Matasar's wife is  
24 completely outside of the control of any of us and an  
25 event that is -- that is, you know -- an event that was

1 completely, you know, unanticipated and unrelated to  
2 normal case matters.

3 The fact that there are a number of people in  
4 the office who have been assisting me, you know, in my  
5 portion of this case, I run an office, I have another  
6 caseload, and have been putting a fair amount of my own  
7 time into the case. The reality of the way in which I  
8 run the office does not mean that there is anyone in the  
9 office who is able to step in on the accounting pieces.

10 Ms. Sweet is a research and writing attorney  
11 and not a person who is a courtroom attorney. I was  
12 lucky to have, you know, met Bernie Casey during the  
13 Guantanamo work. He was bored. He volunteered a little  
14 bit of time to help out with a couple of specific  
15 aspects of the case. And he doesn't get paid. He's not  
16 in any position to step in. I'm not sure who the other  
17 fourth lawyer that Mr. Cardani was referring to as  
18 having been in the courtroom last week is.

19 MR. CARDANI: Would that be Mr. Teesdale, the  
20 investigator?

21 MR. WAX: Mr. Teesdale is our chief  
22 investigator. He is a member of the bar, but he does  
23 not function as an attorney in terms of any  
24 representational capacity, and is not a person who is  
25 either authorized by employment or by, you know, the

1 rules under which we operate or by any ability to stand  
2 up in a courtroom and examine witnesses.

3 THE COURT: I would like to know from each of  
4 you whether -- you know, there are other complications.  
5 For example, our court reporter, we have to have a court  
6 reporter who has the proper security clearances. And  
7 she has vacation plans also, and tickets bought and so  
8 on.

9 What -- without deciding the motion yet, what  
10 is the -- each of your availability beginning August 23?

11 MR. WAX: If that is when the -- if it works on  
12 the court's calendar, I can be there to do it. We've  
13 got a family wedding back East, but this case needs to  
14 be tried, and the wedding can -- my wife can be our  
15 delegate.

16 MR. MATASAR: Mr. Wax, have you checked with  
17 the experts?

18 MR. WAX: No. We have -- Judge, we have put  
19 out an inquiry to the expert witnesses to see who is  
20 available when, and we only have word back from one of  
21 them, and I think we have six or seven people right now,  
22 so I'm not sure at this moment what the availability of  
23 the experts would be. August 23 -- when is Labor Day?  
24 Labor Day this year is the 6th, so we should have the  
25 case finished before Labor Day, which would mean we

1 would be looking at getting our experts in the week of  
2 August 30th through September 3rd. I just haven't heard  
3 back yet.

4 THE COURT: Depending on how long the  
5 government's case takes that is.

6 MR. WAX: Yep.

7 THE COURT: Mr. Cardani, how long do you  
8 anticipate your case taking?

9 MR. CARDANI: The big unknown is cross-  
10 examination, Judge. I would say if we had just, you  
11 know, your normal cross-examination, we would be done --  
12 Mr. Gorder, correct me if I'm wrong, but I'd say within  
13 a week.

14 MR. GORDER: I would agree with that, Your  
15 Honor. This is Charles Gorder.

16 THE COURT: All right. What are your  
17 availabilities or not?

18 MR. CARDANI: Judge, I'm away on a vacation in  
19 Boston and I get back the night of August 17th.

20 THE COURT: Mr. Gorder?

21 MR. GORDER: Your Honor, I would be available  
22 that week. I've got a vacation scheduled the first two  
23 weeks of August, so I would get back towards the end of  
24 that week.

25 THE COURT: Is it better for you --

1 MR. GORDER: One of our experts, Evan Kohlmann,  
2 is scheduled to be in Guantanamo Bay through August  
3 20th, so if for some reason he was delayed, that might  
4 be possible.

5 THE COURT: Do you know if it's better on your  
6 calendars that we start one week later on the 30th?

7 MR. CARDANI: Yes. Mr. Cardani says yes.

8 THE COURT: And let me hear from the others,  
9 please.

10 MR. GORDER: Charles Gorder, Your Honor. That  
11 would be okay with me.

12 MR. WAX: My only concern with that, Judge, is  
13 it then takes us through the Labor Day weekend, which is  
14 potentially a problem for witnesses and jurors.

15 I guess the other question I would ask the  
16 court is -- oh, someone has a vacation the first two  
17 weeks in August?

18 THE COURT: Yes.

19 MR. WAX: Because I was wondering to get it  
20 in -- the judicial conference is the --

21 THE COURT: I don't have a court reporter the  
22 first two weeks in August who has proper clearance.

23 The third week, well, Mr. Cardani is gone then.  
24 The judicial conference is in Maui. I could miss that,  
25 but, you know, I'm going to work my schedule hard, but

1 it doesn't sound like that will work anyway.

2 MR. WAX: If you are looking toward that time  
3 frame, Judge, I think it might, in terms of witness  
4 availability, we might have a little more luck if we  
5 start the 23rd rather than the 30th, but if you're  
6 inclined to go that time frame, perhaps we should get  
7 back to all the experts and check on schedules to see  
8 whether it makes any difference to them, and if so, how  
9 many, whether we're looking at the 30th or the week of  
10 Labor Day in terms of availability for them.

11 THE COURT: Just a moment. I'll reset the  
12 trial to August 30th. There won't be any further  
13 resettings, gentlemen. It will be tried then. Anything  
14 further?

15 MR. WAX: Not on our side, Your Honor, unless  
16 you can remain somewhat flexible about whether it's the  
17 23rd or 30th so we can try to get word back from some of  
18 these experts.

19 THE COURT: No, it's set on the 30th. That's  
20 when we're going to start. Thank you very much. Good  
21 day.

22 (The proceedings were concluded at 1:55 p.m.)  
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24  
25

## 1 CERTIFICATE

2 I, Deborah Wilhelm, Certified Shorthand Reporter  
3 for the State of Oregon, do hereby certify that I was  
4 present at and reported in machine shorthand the oral  
5 proceedings had in the above-entitled matter. I hereby  
6 certify that the foregoing is a true and correct  
7 transcript, to the best of my skill and ability, dated  
8 this 22nd day of September, 2011.

9  
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11  
12 /s/ Deborah Wilhelm

13 \_\_\_\_\_  
14 Deborah Wilhelm, RPR  
15 Certified Shorthand Reporter  
16 Certificate No. 00-0363  
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